IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered on : 10.04.2015
Reserved on 02.09.2014

Coram

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

Crl.O.P.Nos.29393 and 14654 of 2013
MP.Nos.1 + 1 of 2013

1.J.Nagakesari
2.N.Bright Samson Petitioners in Crl.OP.29393 of 2013/A1 & 2

1.Buvaneswari
2.G.D.Ramalingam
3.S.Lakshmipathy Reddiar
4.C.Durairaj
5.B.Balaji
6.G.Chandran
7.M.Ponnambalam
8.M.Abdul Rahim Petitioners in Crl.OP.14654 of 2013/A3 to 10

Vs.

1.The State rep by Special Sub-Inspector of police,
Central Crime Branch,
Team 18-A, Egmore,
Chennai - 8.

2.D.James Nayagam Respondents in both the Crl.OPs./
Complainant & Defacto Complainant

Prayer in both the petitions :- Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records pertaining to the FIR in Cr.No.175 of 2013 on the file of the first respondent police and to quash the same.

For Petitioners: M/s.A.N.Rajan in Crl.OP.29393 of 2013
Mr.M.V.Muralidharan in Crl.OP.No.14654 of 2013
For respondents: Mr.C.Emalias, APP for R1 in both the Crl.OPs.
Mr.G.Thilakavathi for R2. in both the Crl.OPs.

COMMON ORDER

While Crl.OP.No.14654 of 2013 is filed by A3 to A10 Crl.OP.No.29393 of 2013 is filed by A1 and A2 in Cr.No.175 of 2013 on the file of the first respondent/Sub Inspector of Police, Central

Crime Branch, Egmore for quashing the criminal proceedings initiated against them on the basis of the complaint dated 07.12.2012 given to the Commissioner of Police, Chennai by the second respondent/defacto complainant.

2.The FIR in Cr.No.175 of 2013 proceeds to say that the father of the defacto complainant by name Deivasagayam who was doing real estate business, entered into a sale agreement during 1987 with one G.K.Dasaratha Reddiar in respect of his properties in Villivakkam, Konnur Village and in respect of the property in S.No.193/4 (193/2A) measuring 8 grounds 512sq.ft and Dasaratha Reddiar died in 1988 and thereafter they obtained General Power of Attorney in respect of property in S.No.193/4. The legal heirs of Dasaratha Reddiar having obtained entire sale consideration and executed an undertaking on 28.12.1989 stating that the entire A schedule property belongs to Deivasagayam and thereafter the father of the defacto complainant also purchased the property situated in S.No.192/2 from one Authimoolam and Victor. Thereafter the father of the defacto complainant had been in possession and enjoyment of properties comprised in S.No.193/4 (193/2A) and 193/2B. It is further alleged in the complaint that after the death of the father, the defacto complainant has come to know through encumbrance certificate that one lease deed was executed by one Nagakesari of St.Joesph Charity Trust in favour of his son Sam Britan for 30years in respect of the land situated in S.No.193/4. It is further revealed that one of the legal heirs of Dhasaratha Reddiar by name Ramalingam has also executed a release deed in favour of his sister Buvaneswari in respect of the property sold to his father and Buvaneswari in turn has executed a gift deed in favour of her husband Lakshmipathy and Lakshmipathy has executed a general power of attorney in favour of one Durairaj in order to help Nagakesari and Sam Britan. Thus Buvaneswari, Ramalingam and Lakshmibathy have created forged documents in respect of the property in question and when they were questioned by the defacto complainant they threatened the defacto complainant. The allegation raised in the complaint in short are to the effect that all the accused in order to receive personal gain joined together and created forged documents to grab the entire property belonging to the defacto complainant. The complaint was registered as Cr.No.175 of 2013 for the offences under Sections 420, 465, 468, 471 r/w.120(b) IPC. Pending investigation into both the FIRs, A1 and A2 and A3 to A10 have come forward with the present criminal original petitions for quashing the same.

3.According to the petitioners, there are already civil proceedings initiated by different set of claimants in respect of the same property and the civil proceedings are now pending at the stage of second appeals and the dispute between the parties is more of civil in nature, involving the issue relating to right, title and interest over the property in question and pending the civil proceedings, the criminal complaint suppressing the pendency of the same cannot be entertained. It is also contended by them that the allegations raised in the complaint based on which FIR is registered against the accused do not disclose the ingredients attracting any IPC offences against any of the petitioners. It is argued herein that in the event of the criminal proceedings being allowed to go on, it will amount to abuse of process of law and it is likely to prejudice the petitioners and likely to prejudice their claim in the civil proceedings.

4.The relief sought for in both the criminal original petitions are seriously opposed by the first respondent/IO as well as the defacto complainant/second respondent.

5.Heard the rival submissions made on both sides and perused the records.

6.The dispute raised in the complaint is in respect of the property comprised in S.Nos.193/4, (193/2A) and 193/2B. The defacto complainant claims title to the property under sale agreement dated 10.02.1987 allegedly entered into between the original owner Dasaratha Reddiar who is none else than the father of A3 and A4 and general power of attorney executed by A3 and A4 and one Munirathinammal and Sathyanarayanan and sale deeds dated 28.12.1989. While the first set of documents are according to the defacto complainant relating to S.No.193/4 (193/2A), the sale deeds dated 28.12.89 are according to the defacto complainant relating to the property in S.No.193/2B. The documents which are according to the complainant created illegally by an act of forgery, are (1)lease deed executed by A1/Nagakesari in favour of his son A2/Bright Samson in respect of S.No.193/4 (2)release deed executed by A4/Ramalingam in favour of his sister A3/Buvaneswari (3)gift deed executed by Buvaneswari in favour of her husband A5/Lakshmipathy (4)general power of attorney executed by Lakshimapthy in favour of A6/Durairaj.

7.The petitioners herein have in the typed set of papers separately filed by them produced the copy of the following documents (1)sale agreement dated 10.02.1987 (2)Power of Attorney dated 19.07.1989 which are referred to by the Defacto Complainant. The other documents produced on the side of the petitioners are (1) release deed dated 18.09.2009 executed by Ramalingam in favour of Buvaneswari (2)Settlement deed dated 25.01.2010 executed by Buvaneswari in faovur of Lakshmipathy, the extract from town survey land register in the name of Lakshmipathy in favour of the tax receipt and the power of attorney dated 09.12.2011 in favour of A6/Durairaj. The second respondent/defacto complainant has also in the typed set of papers filed by him in addition to other documents, produced the copy of sale agreement 30.07.2012 executed by A6/Durairaj in favour of A9/Ponnambalam.

8.The defacto complainant has come forward with the allegations that the documents above referred to are forgedly created by the accused in order to cheat the legal heirs of Deivasagayam for grabbing the entire property. That is why, the FIR is registered for the ofences under Sections 420, 465, 468, 471 r/w.120B IPC. The learned counsel for the petitioners would first of all argue that there is no act of forgery in executing the documents as above referred to and in the absence of any act of forgery, no ingredients for other IPC offences as above referred to are made out in the present case. The learned counsel for the petitioners has at this juncture drawn the attention of this court to Sections 463 and 464 IPC, which define the act of forgery and making a false document. The act of forgery as defined under Section 463 is, whoever makes any false document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, under section 464, there are three modes to make a false document. Firstly, a person is said to make a false document, who dishonestly or fraudulently (a)makes, sign, seals, or execute a document or part of a document (b)......... (c)....... (d).......with the intention of causing it to be believed that such document was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed. The second type of making a false document is who, without lawful authority, dishonestly or fraudulently by cancellation or otherwise, alters a document in any material part thereof, after it has been made, executed or affixed with either by himself or by any other person, whether such person be living or dead at the time of such alteration. The third mode of making a false document is who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration. Section 465 is the penalty section for the act of forgery and Section 468 deals with the forgery for the purpose of cheating and section 471 is the punishment section for fraudulently or dishonestly uses as genuine the forged document. As rightly argued by the learned counsel for the petitioner in the present case, the allegations regarding the manner of execution of the documents do not attract the ingredients of making false documents under either of the three modes as explained above.

9.Here is the case, wherein the lease deed is executed by A1 in favour of A2 in respect of his possessory right. It is an admitted case that A1 and A2 have been running the educational institution in the property in question and the lease deed executed is for using the property for the purpose of carrying on educational institution, it is executed by A1 in favour of A2 claiming himself to be in possession of the property. It does not fall under any of the three types of false documents as defined under Section 464. In that event, no ingredients for the offences under Sections 464, 465, 468 and 471 can be attracted in respect of the lease deed.

10.Similar reasoning can be applied to other documents executed by A4 in favour of A3, A3 in favour of A5 and A5 in favour of A6 and A6 in favour of A9. In all these documents, the respective parties claiming themselves to be the persons having right over the property executed the document in question in favour of others and the same also do not fall under either of the three types of false documents as explained under Section 464 IPC. As such, no ingredients for the offences charged against A3 to A10 are attracted herein.

11.As rightly argued by the learned counsel for the petitioners, creating false document by an act of forgery is different from executing document without any right over the property in question. The execution of either of the transactions does not involve any act of forgery. If at all there is any grievance it is only that they are executed without any legal right to do so and it will only give rise to a civil dispute. As a matter of fact, there are different civil suits filed by A1 and A2 against the defacto complainant and by the defacto complainant against others and by A5/Lakshmipathy who is the power of attorney of A6/Durairaj against A1 and A2 and the defacto complainant and others etc.,

12.The facts made available herein would reveal that the trust namely St.Joseph Charitable Trust having the first petitioner and his wife as trustees filed a suit for specific performance of the agreement purportedly entered into between the trustees and the father of the defacto complainant. The suit in OS.No.11546 of 1996 was tried by the V Assistant Judge, City Civil Court, Chennai and was decreed in favour of the trust and the trial court decree was reversed by the appellate court. Pending suit for specific performance the defacto complainant's father filed a suit in OS.No.9222 of 2010 against the trust for delivery of possession and for damages. Pending the suit, he died and his legal representatives got impleaded and the same was again contested and tried by City Civil Court, Chennai. Pending the same, the trust also filed OS.No.9223 of 2010 against the legal heirs of Deivasagayam for the relief of injunction and both the suits were commonly disposed on 27.07.2011. While the suit filed by the trust was dismissed, the other suit filed for delivery of possession was partly decreed in respect of portion of the property. While the trust filed two appeals in AS.Nos.511 and 568 of 2011 the defacto complainant filed AS.No.17 of 2013 in respect of the claim rejected by the trial court and all the appeals are pending before the High Court and pending appeals the trust was granted an order of interim stay of delivery of possession on condition to make deposit of lumpsum amount and the condition was also complied with by the trust who therefore continues to be in the occupation of the property.

13.Whileso, A5/Lakshmipathy filed OS.No.6835 of 2012 against A1, A2 and the defacto complainant for the relief of permanent injunction and obtained temporary injunction in IA.No.16564 of 2012 and the same was not challenged by the defacto complainant, but challenged by the petitioners by way of CMA.No.53 of 2013 and the same was allowed and questioning the correctness of the same, the plaintiff/A5/Lakshmipathy has filed CRP.No.2434 of 2013. The petitioners in Crl.OP.No.29393 of 2013 have also produced by way of typed set of papers the copies of common judgment in OS.Nos.9222 and 9223 of 2010 and orders made in MP.Nos.1 and 4 of 2011 in AS.No.511 of 2011 and decreetal order in IA.No.16564 of 2012 in OS.6835 of 2012 and CMA.No.53 of 2012 etc.,

14.The perusal of the records relating to the above referred to court proceedings would reveal that there are serious civil dispute among the parties over title in respect of and right to be in possession of the property and the rights of the parties are pending final determination before the civil Court. Whereas the complainant in his complaint has not made any mention about the pendency of the civil proceedings. As rightly argued by the learned counsel for the petitioners, such conduct on the part of the second respondent/defacto complainant to come forward with the criminal complaint pending determination of his right over the property in question in the civil proceedings, that too, by totally suppressing the pendency of the same would disclose the malafide intention with which the present complaint is filed.

15.Be that as it may, the contention raised by the parties before the civil court and the issues framed and decided by the trial court and to be decided by the appellate court would support the arguments raised on the side of the petitioner, that the dispute between the parties is more of civil in nature and the same can be decided only on appreciation of validity of the documents and appreciation of evidence and no criminality can be attached to such dispute by way of criminal complaint. Even otherwise, the allegations raised in the complaint also would only disclose the nature of the dispute between the parties as more of civil in nature and do not attract the ingredients any IPC offences charged against them. In my considered view, the parties who have been fighting for their right before the civil forum cannot be subjected to face the ordeal of trial in the criminal proceedings for the same right claimed before the civil court and no criminal criminal proceedings can be allowed to go on in respect of their civil dispute over the property in question and the same would only amount to abuse of process of Court. That being so in order to secure the ends of justice, the proceedings initiated against the petitioners, is liable to be quashed and hence stands quashed.

16.In the result, both the criminal original petitions are allowed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Public Prosecutor, High Court, Madras.

2.The Special Sub-Inspector of police,
Central Crime Branch, Team 18-A, Egmore, Chennai - 8.

+1 cc to M/s.M.V.Muralidharan, Advocate,SR.20120.

Sai(co)
krd 24/6

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and 14654 of 2013